

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOHN N. and MARY C. COCCO,

Plaintiffs,

v.

1:12-cv-1576

BANK OF AMERICA HOME LOANS,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

By Decision and Order dated July 8, 2013,¹ the Court converted Defendant's motion pursuant to Fed. R. Civ. P. 12 to one under Fed. R. Civ. P. 56 limited to the issue of whether Plaintiffs timely requested verification of the debt. The Court gave the parties an opportunity to submit supplemental materials in support of, or opposition to, the converted motion. The Court also granted Plaintiffs leave of thirty days to file an amended complaint to set forth valid and timely claims. Defendant timely filed supplemental materials. Plaintiffs have neither filed supplemental materials nor filed an amended complaint. The Court will now address the motion for summary judgment.

If a consumer properly disputes a debt within thirty days of receiving notice of that debt, the debt collector is required to cease collection until the debt has been verified. 15 U.S.C. § 1692g(b). Here, Plaintiffs claim that Defendant violated this provision by continuing

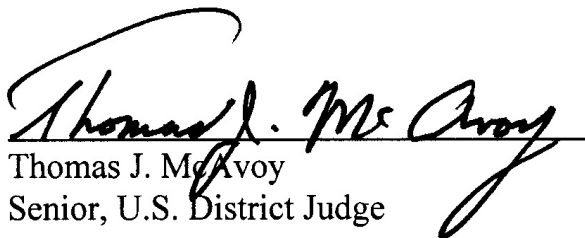
¹ Familiarity with all prior proceedings is presumed.

to collect on the debt after a request for validation. Defendant, on the other hand, asserts that Plaintiffs never requested validation within thirty days and, therefore, the continued efforts at collection do not violate the statute.

In its supplemental papers, Defendants submit evidence that they provided notices to Plaintiffs concerning the debt on September 15, 2010 and July 1, 2011. Defendants submit that they have no record of Plaintiffs requesting verification within thirty days of either of these notices. Defendants identify letters from Plaintiff from December 2011, May 2012, and June 2012. None of these dates are within thirty days of the notices sent by Defendant. Plaintiffs have not supplied anything demonstrating the existence of a triable issue of fact concerning whether they timely requested verification of the debt.

Having demonstrated their entitlement to summary judgment and because Plaintiffs have not submitted an amended complaint within the time frame allotted by the Court, Defendant's motion for summary judgment is GRANTED and Plaintiffs' Complaint is DISMISSED WITH PREJUDICE. The Clerk of the Court shall close the file in this matter. IT IS SO ORDERED.

Dated: August 21, 2013


Thomas J. McAvoy
Senior, U.S. District Judge